

STATE OF RHODE ISLAND
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
OFFICE OF THE COMMISSIONER

*In re the September 22, 2021 Request for a
Declaratory Order Pursuant to R.I. Gen. Laws
§ 42-35-8 by Counsel for the Exeter-West Greenwich
Regional School District Regarding the Meaning
of R.I. Gen. Laws §§ 16-64-1 and 16-64-1.1*

RIDE D.O. 21-001-A

1. The Request for the Declaratory Order

On September 22, 2021, counsel for the Exeter-West Greenwich School District (“EWG”) wrote the Commissioner to request a declaratory order pursuant to R.I. Gen. Laws § 42-35-8(a) to clarify the meaning of R.I. Gen. Laws §§ 16-64-1 and 16-64-1.1. Counsel wrote that “[w]hile Section 16-64-1 states that it is the city or town that shall be reimbursed for the education provided to children residing in group homes, Section 16-64-1.1(b)(2) states that reimbursement is to be made via educational aid to the School District.” Counsel suggested that this created an “apparent potential conflict of law.” *Id.* at 2.

Specifically, EWG’s counsel inquired as to whether the statutory reimbursement provided with respect to: (a) the cost of educating a child “placed in group homes, in foster care, in child caring facilities, or by a Rhode Island state agency or a Rhode Island licensed child placing agency” under R.I. Gen. Laws § 16-64-1; and/or (b) the reimbursement provided when a city or town “contains one or more group homes or other residential facilities that do not include the delivery of educational services” under § 16-64-1.1(b)(2), should be made to EWG, or alternatively, to its member towns, i.e., the Towns of Exeter and West Greenwich.

2. Declaratory Orders and Appeals

R.I. Gen. Laws § 42-35-8 provides that “[a] person may petition an agency for a declaratory order that interprets or applies a statute administered by the agency or states whether, or in what manner, a rule, guidance document, or order issued by the agency applies to the petitioner,” *id.* at (a), and “[n]ot later than sixty (60) days after receipt of a petition under subsection (a), an agency shall issue a declaratory order in response to the petition, decline to issue the order, or schedule the matter for further consideration.” *Id.* at (c); *see generally Regulations Governing Declaratory Order Petitions* (the “D.O. Regs.”), 200 R.I. Admin. Code 30-15-2.1, *et. seq.*

In addition, R.I. Gen. Laws § 42-35-8(e) provides that declaratory a order “has the same status and binding effect as an order issued in a contested case and is subject to judicial review under § 42-35-15.” *Id.*

3. R.I. Gen. Laws §§ 16-64-1 and 16-64-1.1

R.I. Gen. Laws § 16-64-1 provides, in pertinent part, that:

Children placed in group homes, in foster care, in child caring facilities, or by a Rhode Island state agency or a Rhode Island licensed child placing agency shall be deemed to be residents of the city or town where the group home, child caring facility, or foster home is located for the purposes of enrollment, and this city or town *shall be reimbursed* or the child's education shall be paid for in accordance with § 16-64-1.1.

Id. (emphasis added). Under § 16-64-1.1, the Department of Children, Youth and Families ("DCYF") is instructed to provide RIDE "with a precise count of how many group home or other residential facility 'beds' exist in each Rhode Island city or town, counting only those 'beds' in facilities that do not include the delivery of educational services." *Id.* at (b)(1). The Section goes on to provide that:

For all fiscal years beginning after June 30, 2016, *education aid for each school district* shall include seventeen thousand dollars (\$17,000) for each bed certified by DCYF by the preceding December 31 . . . For all fiscal years beginning after June 30, 2008, whenever the number of beds certified by DCYF for a school district by December 31 is greater than the number certified the prior December 31 upon which the education aid for that fiscal year was appropriated, *the education aid for that district as enacted by the assembly during the prior legislative session for that fiscal year will be increased* by the number of increased beds multiplied by the amount per bed authorized for that fiscal year. The Department of Elementary and Secondary Education shall include the additional aid in equal payments in March, April, May, and June, and the Governor's budget recommendations pursuant to § 35-3-8 shall include the amounts required to provide the increased aid.

Id. at (b)(2) (emphasis added).

4. The Arguments of the Towns

On October 5, 2021, the Commissioner's legal counsel emailed the September 22 letter requesting a declaratory order to the Solicitors for the Towns of Exeter and West Greenwich and added that "[s]hould either of you (or [the EWG's attorney] for that matter) seek to submit a legal memorandum in support of a position on the issue raised, please do so by the close of business on Friday, October 22, 2021."

The Solicitor for the Town of West Greenwich submitted a legal memorandum dated October 7, 2021 (the "WG Mem.") in which he argued that EWG's counsel was:

too narrowly focused on the phrase ‘city or town’ in that statute, and does not focus enough on the phrase ‘reimbursed’ or the phrase ‘in accordance with § 16-64-1.1.’ Since this group home aid is a ‘reimbursement’ it should only be paid back to the entity that expended the initial funds to educate the children at issue.

See WG Mem. at 2. West Greenwich also argued that the above interpretation was supported by the fact that:

- (a) R.I. Gen. Laws § 16-7-16 defines “community” to include “any city, town, **or regional school district.**” (Emphasis added). See WG Mem. at 2;
- (b) Although § 16-64-1.1(b) provides that “[e]ach city and town that contains one or more group homes or other residential facilities that do not include delivery of educational services will receive funds as part of state aid to education in accordance with the following provisions,” *id.*, it also makes clear that such funds are provided “as part of state aid to education,” and shall be “in accordance with the following provisions,” *id.*, and then refers to the aid relating to group homes as “education aid **for each school district** [which] shall include seventeen thousand dollars (\$17,000) for each bed certified by DCYF by the preceding December 31.” See § 16-64-1.1(b)(2) (emphasis added). See WG Mem. at 2-3; and
- (c) R.I. Gen. Laws § 16-3-19 makes clear that the burden of educational costs relating to group homes is not borne solely by municipalities, but rather provides that those educational costs are “borne by the member towns and/or cities that comprise the regional school district in that proportion that the equalized weighted assessed valuation of the property of the towns and cities that lie within the regional school district . . . bears to the total equalized weighted assessed valuation of the total property of the regional school district.” *Id.*; see also *Town of Warren v. Bristol Warren Reg'l Sch. Dist.*, 159 A.3d 1029 (R.I. 2017). See WG Mem. at 4-5.

Counsel for the Town of West Greenwich wrote on October 20, 2021 and argued that:

- (a) “the cost of Group Home student education should be borne initially and entirely by the child's district or Town of origin rather than by either the Group Home host Town or by the District of enrollment” and “[a]ny State reimbursements could then properly accrue to the Town or District of the child's origin.” *Id.*; and
- (b) “any potential statutory clarification should be left to the legislature or to the school district and its constituent Towns for resolution” and therefore “the Commissioner should refrain from intervening until intra-municipal discussions have run their course or until a legislative solution can be promulgated.” *Id.*

4. The Declaratory Order

Preliminarily, it should be noted that the Rhode Island Supreme Court has explained that:

‘When interpreting a statute, our ultimate goal is to give effect to the General Assembly’s intent. * * * The best evidence of such intent can be found in the plain language used in the statute. Thus, a clear and unambiguous statute will be literally construed.’ *Steinhof v. Murphy*, 991 A.2d 1028, 1036 (R.I.2010) (quoting *State v. Germane*, 971 A.2d 555, 574 (R.I.2009)). ‘When a statute is ambiguous, however, we must apply the rules of statutory construction and examine the statute in its entirety to determine the intent and purpose of the Legislature.’ *In re Tetreault*, 11 A.3d 635, 639 (R.I.2011) (quoting *Harvard Pilgrim Health Care of New England, Inc. v. Rossi*, 847 A.2d 286, 290 (R.I.2004)).

Kingston Hill Academy v. Chariho Regional School District, 21 A.3d 264, 271 (R.I. 2011).

Section 16-64-1 makes a distinction between situations: (a) when the “city or town shall be reimbursed,” *id.* (emphasis added); and (b) when “the child’s education shall be paid for in accordance with § 16-64-1.1.” *Id.* It is clear that in the second of these two situations, i.e., when “the child’s education shall be paid for in accordance with § 16-64-1.1,” payment should be made to the school district since § 16-64-1.1(b)(2) expressly provides that the payments shall be made as part of the “education aid for each school district.” *Id.* (emphasis added). The “apparent conflict of law” raised by counsel for the EWG District thus centers upon the reference to reimbursing a “city or town” in § 16-64-1. However, when one follows the instruction of the Court in *Kingston Hill Academy, supra*, and focuses on the plain statutory language – and particularly the ordinary meaning of what it means “to reimburse” – the “apparent potential conflict of law” becomes more apparent than real, since it is clear that in order to be “reimbursed,” one has to have made some sort of payment.¹

Thus, if the Towns of Exeter or West Greenwich had actually made the per-pupil payments mandated under § 16-64-1.1(c), an argument could perhaps be made that they would be entitled “to be reimbursed” under § 16-64-1. But that has never actually been the case. The per-pupil payments have been made by the EWG District, and thus the District, not its member towns, is entitled to be paid “in accordance with § 16-64-1.1.” *See* § 16-64-1. Indeed, as noted, Section 16-64-1.1(b)(2) expressly provides that the payments shall be made as part of the “education aid for each school district.” *Id.* (emphasis added).

The above interpretation is supported by the various points made by West Greenwich, *supra*, which are hereby incorporated by reference.

Finally, as to Exeter’s claim that the Commissioner should “refrain from intervening until intra-municipal discussions have run their course or until a legislative solution can be promulgated,” *see* October 20, 2021 letter from Exeter’s counsel, the Commissioner is under a statutory duty to: (a) “distribute state school funds in accordance with law and regulations of the council on elementary and secondary education.” R.I. Gen. Laws § 16-60-6(9)(iii); (b) “interpret school law.” *Id.* at (9)(viii); and (c) “require the observance of all laws relating to elementary and secondary schools and education.” *Id.* at (9)(vii). Thus, abstention is not an option.

¹ Thus, Merriam-Webster’s definition of “reimburse” as a transitive verb is “to pay back to someone: REPAY.” *See* <https://www.merriam-webster.com/dictionary/reimburse>.

Finally, as noted, this order is subject to judicial review under § 42-35-15. See R.I. Gen. Laws § 42-35-8(e); D.O. Regs., 200 R.I. Admin. Code 30-15-2.6.

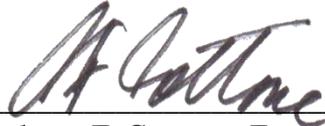
Entered as a final agency Order this 3rd day of November, 2021.



Angélica Infante-Green,
Commissioner

Certificate of Service

I hereby certify that I caused a true and accurate copy of this Declaratory Order to be posted on RIDE's website and to be served by email on this 3rd day of November, 2021 upon Robert E. Craven, Esq. (at bob@robertecraven.com), Michael Ursillo, Esq. (at mikeursillo@utrlaw.com), Peter Skwirz, Esq. (at apfs@adlawllc.net); and James P. Marusak, Esq. (at jpm@gsm-law.com).



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